



DOMESTIC VIOLENCE INVESTIGATION

FC No.: 535

Date: 11-14-08

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with state law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Policy

The department is committed to reducing the incidence and severity of domestic violence by recognizing it as a significant societal problem but dealing with it as a serious criminal offense. The department strives to:

- 1. Educate victims as to their legal rights.
- 2. Advise victims of the help that is available to them.
- 3. Encourage victims to seek legal and social assistance.
- 4. Control abusers and hold them accountable for their actions.
- 5. Ensure that officers are prepared to respond to and effectively deal with domestic violence calls for service.

II. Domestic Abuse Laws of Arrest

- A. Under the Criminal Procedure Article, Section 2-204:
 - 1. "A police officer may arrest a person without a warrant, if:
 - a. The police officer has probable cause to believe that:
 - i. The person battered the person's spouse or another person with whom the person resides;
 - ii. There is evidence of physical injury; and
 - iii. Unless the person is arrested immediately, the person:
 - May not be apprehended,
 - May cause physical injury or property damage to another, or
 - May tamper with, dispose of, or destroy evidence; and
 - b. A report to the police was made within 48 hours of the alleged incident.
 - 2. Self-defense - If the police officer has probable cause to believe that mutual battery occurred and arrest is necessary under subsection (a) of this section, the police officer shall consider whether one of the persons acted in self-defense when determining whether to arrest the person whom the police officer believes to be the primary aggressor."
- B. Physical assault, alleged or verified, as the result of domestic abuse, shall be treated as a criminal violation, and an incident report will be written. It is strongly recommended that the responsible individual be

arrested if the conditions of the Criminal Procedure Article, Section 2-204 are met (See section II.A). When an officer is able by law to make an arrest and chooses not to, the officer will explain in the narrative of the incident report why an arrest was not made and the specific actions taken to ensure the safety of the victim. The Family Law Article, Section 4-501, "abuse means any of the following acts:

1. An act that causes serious bodily harm;
2. An act that places a person eligible for relief in fear of imminent serious bodily harm;
3. Assault in any degree
4. Rape or sexual offense *under §§ 3-303 through 3-308 of the Criminal Law Article* or attempted rape or sexual offense in any degree;
5. False imprisonment; or
6. *Stalking under § 3-802 of the Criminal Law Article.*"

C. *The department's position* in determining a situation of domestic violence will involve an intimate relationship. A common denominator is a "couple" or "partner" relationship. Victims can include the following persons who reside or have resided with the abuser:

1. The current or former spouse
2. An individual who has a child in common with the abuser, whether or not they reside together
3. A cohabitant or former cohabitant
4. An individual who is dating, or has dated, the abuser.

Note: Whether or not the partners reside together should not be a determining factor in regards to ensuring the victim's safety or determining the likelihood of further violence.

III. Domestic Violence Complaints

A. *When an officer is on the scene of a domestic violence incident, the following steps should be taken:*

1. *Secure the scene for officer safety, victim safety, and evidentiary purposes.*
2. *Conduct a preliminary investigation.* It is imperative that the patrol officer's investigation be as thorough as possible. Victim, witness, and suspect statements should all be included in the investigation. Photographs should be taken whether or not an arrest is made. *Digital photographs will be uploaded to the photographic evidence database prior to the end of the officer's tour of duty.*
3. *Notify proper investigative unit per FC 611, "Follow-Up Investigations."*
4. Complete the MCP 535, "Domestic Violence Supplemental," for all domestic violence *incidents* where an incident report is written.
5. *Complete the MCP 536, "Domestic Violence Lethality Screen," for all domestic violence incidents when an intimate relationship is involved and:*
 - a. *The officer believes an assault has occurred; or*
 - b. *The officer believes the victim faces danger once the officer leaves; or*
 - c. *The parties have been involved in prior domestic violence incidents; or*
 - d. *There have been prior domestic violence incidents at that address; or*
 - e. *The officer simply believes one should be conducted.*
6. *Contact the Abused Persons Program (APP) counselor at (240) 777-4673 to relay high danger lethality assessment findings only. If no one answers, contact the Crisis Center at (240) 777-4000, 24 hours a day. Explain the situation to the counselor and attempt to have the victim speak with the counselor. The APP/Crisis Center is designed to provide the victim with information on shelter, counseling, and safety planning. If the victim refuses to speak with the counselor, document the refusal in the incident report.*
7. Provide an MCP 1107, "Victim/Witness Assistance Information," to the victim in accordance with Family Law Article, Section 4-503.
8. *Forward copies of the MCP 535, the MCP 536, and the incident report to the Domestic Violence Unit (DVU) by the end of the officer's tour of duty.*

B. In cases of alleged domestic violence where no arrest is made, parties involved will be advised of the following:

1. The individual may respond to a **district court** commissioner to apply for a charging document. The commissioner will determine whether a warrant or summons will be issued.
2. If the commissioner does not issue a charging document, the victim may elect to request the issuance of a charging document through the State's Attorney's Office.
3. The victim will be given the CR number of the report. The victim may, at a later date, obtain a copy of the incident report from the **Information Support and Analysis** Division for a fee.
4. The individual may seek a court order for protection from domestic violence. Information can be obtained by contacting the court at the Civil Office at (301) 279-1500. The petitions can be filed between 0830 - 1630 hours, Monday through Friday.
5. Outside normal business hours for the District Court (i.e., nights, weekends and holidays), an interim **Protective Order** or a Peace Order can be obtained through **the district court commissioner**.
6. To obtain shelter, counseling, and legal advice, the individual may contact the **Crisis Center at (240) 777-4000, 24 hours a day**.

C. **When an Arrest is Made**

In cases when there is an arrest made, officers will:

1. *Complete the "Central Processing Unit – Domestic Violence Victim Notification Form" which is available at CPU and attach it to the Arrest Packet Form 513. If the defendant is released within 12 hours of arrest, this step will enable a timely notification of the victim by the Montgomery County Detention Center (MCDC) personnel. In the event the MCDC is unable to contact the victim, the MCDC will then notify the Crisis Center.*
2. *Provide the victim with the Victim Information Notification Everyday (VINE) brochure prior to leaving the scene. The victim must register for this service if they wish to receive notification.*

- D. DVU **investigators** will obtain **any recordings pertaining to the domestic violence incident and maintain them** for use as evidence.
- E. All domestic violence offenses (excluding civil **Protective Orders**) will be cleared, using the code for "Spouse/Other Domestic," as aggravated assault (04x3), assault and battery (0813), or simple assault (0823).

IV. **Domestic Standbys**

- A. Officers will conduct domestic standbys in accordance with Family Law Article, Section 4-502.
- B. Officers will accompany the complainant to the family home so that clothing and personal effects of the complainant and that of children in the complainant's care may be obtained. Personal effects can include medicine, eyeglasses, or medical devices, regardless of who paid for the items. The needs of each person will vary according to the circumstances and will dictate the definition of necessary items. Mutual property items such as televisions or stereos would not be considered personal items needed for everyday living requirements.
- C. If the complainant's name is not on the lease and a request for entry is refused, the complainant does not have the right to enter and the responding officer does not have the authority to make entry.
- D. Officers responding to domestic standbys are immune from civil liability if the law enforcement officer acts in good faith and in a reasonable manner.
- E. All property disputes regarding vehicles shall be referred to the court commissioner. Officers are instructed to:
1. Advise participants to respond to the nearest commissioner's office to apply for a charging document.

2. Inform the participants that the commissioner has no authority to order any party to give up property, even if a charging document is issued. The commissioner will determine the proper charges to be issued or recommend the participants pursue their claim through civil procedures.

V. Court Order for Protection from Domestic Violence (*Protective Orders*)

- A. No arrest power is inherent in the court order for protection from domestic violence. However, failure to comply with certain provisions as outlined in the Family Law Article, Sections 4-504, 4-505, and 4-506 are misdemeanors and carry possible fines and prison sentences as outlined in Section 4-509 (Penalties).

When writing charges for a violation of a civil Protective Order, officers should use the Family Law Article, Section 4-509, for the violation of the Interim, Temporary, or Final Protective Order. Officers will cite in the charging document which civil Protective Order is violated, Interim (4-504.1), Temporary (4-505), or Final (4-506). Officers should use the CJIS code 2-0254. The State's Attorney's Office is responsible for amending the penalty so the defendant can be prosecuted as a repeat offender.

B. Sheriff's Responsibilities

The Sheriff's Department is the primary agency for the service of civil ***Protective Orders*** and ***citizen generated D/V warrants*** and maintains all records of these.

C. Police Officer's Responsibilities

Although the Sheriff's Department bears the primary responsibility for the service of ***protective*** orders, the sometimes volatile nature of domestic disputes will frequently require police officers to both serve and enforce these orders. The following procedures will be followed in cases where Sheriff's Department personnel are unavailable or it would otherwise be impractical or unsafe for the petitioner to wait for their arrival:

1. Interim, Temporary, and Final Protective Orders will be entered in MILES. Officers will be able to determine if an order is on file while on the scene of a domestic disturbance call.
 - a. If the order has not been served, officers will serve the petitioner's copy by personally delivering the order to the respondent (accused) if the respondent is present. If the petitioner does not have a copy of the order, officers should contact the Sheriff's Department at (240) 777-7016. A copy can be faxed to the district station to be relayed to the officers on the scene. However, because the order is civil, the respondent cannot be detained to wait for the copy of the order.
 - b. Officers may call the Sheriff's Department to confirm prior service of the order or if officers have any questions about the order.
 - c. If an officer serves the order, the Sheriff's Department will immediately be notified, via telephone, and advised of the date, time, and name of the officer serving the order.
 - d. Officers will read the order to the respondent and explain the provisions of the order. Officers will advise the respondent that a violation of any provision in paragraphs one through five of the protective order constitutes a criminal violation of an otherwise civil order and will result in the respondent's arrest if they do not comply. If child custody is awarded in paragraph six, a violation of that provision does not constitute a criminal violation. The respondent should be advised that failure to comply could result in a finding of contempt by the court.
 - e. If the respondent has been ordered to vacate the residence, officers will allow a reasonable amount of time for the respondent to gather enough personal belongings to remain away until the hearing date set forth in paragraph 9 of the order. For safety reasons, officers will accompany the respondent while gathering these belongings and will ensure that the respondent leaves the premises. Officers will not allow the respondent to remove any community property or any property that is in dispute and will advise both parties that those disputes may be settled by the court.
2. Maryland Family Law Article, Section 4-509, states that ***"an officer shall arrest with or without a warrant and take into custody a person who the officer has probable cause to believe is in violation of an Interim, Temporary, or Final Protective Order in effect at the time of the violation."*** (Note:

Federal law “full faith and credit” also applies to civil **Protective Order** issued by a court of another state. The person seeking assistance need only display a copy of an out of state order to an officer.) Upon arrest, the respondent will be charged via a Statement of Charges. The respondent will not be charged via a Maryland Uniform Criminal/Civil Citation. If the officers arrive at the residence and the respondent has already left, the petitioner will be advised that the petitioner may apply to the commissioner or the court for a warrant/summons.

3. On the date set forth in an Interim or Temporary Order, the court will conduct a hearing to determine if the provisions of the order will be continued. If the court finds that sufficient evidence exists, the court can issue a Protective Order that may be in effect for up to 365 days. Violations of these provisions will constitute a criminal violation. Procedures used for the Interim and Temporary Orders will also pertain to the **Final** Protective Order.
4. The violation of a civil **Protective Order** will be documented on an incident report (2742), whether or not an arrest is made, with the petitioner as the victim.

VI. Removal of Firearms

Family Law Article, Section 4-511 states:

1. “In general.- When responding to the scene of an alleged act of domestic violence, as described in this subtitle, a law enforcement officer may remove a firearm from the scene if:
 - a. The law enforcement officer has probable cause to believe that an act of domestic violence has occurred; and
 - b. The law enforcement officer has observed the firearm on the scene during the response.
2. Duty of law enforcement officer - If a firearm is removed from the scene under subsection (a) of this section, the law enforcement officer shall:
 - a. Provide to the owner of the firearm information on the process for retaking possession of the firearm; and
 - b. Provide for the safe storage of the firearm during the pendency of any proceeding related to the alleged act of domestic violence.”

VII. Domestic Violence Involving Law Enforcement Officers

In addition to section III, the following procedures will be **adhered to** when an officer responds to a call for domestic violence and finds the alleged offender is a law enforcement officer from any jurisdiction.

A. Officer Involved - No Probable Cause for Arrest

1. The responding officer will verify that the alleged offender is a law enforcement officer and immediately notify a supervisor to respond to the scene.
2. The patrol/shift supervisor has the following responsibilities:
 - a. Respond to the scene of an officer-involved domestic violence **incident**.
 - b. Notify the DVU by telephone.
 - c. While on the scene of the complaint, notify the district/duty commander.
3. The district/duty commander has the following responsibilities:
 - a. If the officer is a Montgomery County Police (MCP) officer, notify the involved officer’s **Assistant** Chief and fax a copy of the report to the **Assistant** Chief, Field Services Bureau (FSB).
 - b. If the officer involved is from another jurisdiction, ensure that the officer’s department is immediately notified.

B. Officer Involved - Probable Cause for Arrest

1. The responding officer will:
 - a. Verify that the alleged offender is a law enforcement officer and immediately notify a supervisor to respond to the scene.
 - b. Immediately notify the on-duty or on-call DVU investigator who will respond to conduct the investigation.

- c. Effect an on-scene arrest, if possible.
2. The patrol/shift supervisor will:
 - a. Respond to the scene of an officer-involved domestic violence incident.
 - b. **Seize any firearms in accordance with section VI.**
 - c. While on the scene of the complaint, notify the district/duty commander.
3. The district/duty commander will:
 - a. Respond to the scene of an officer-involved domestic violence incident where injury is probable or visible, probable cause for arrest exists, or **an arrest has been made.**
 - b. If the officer is an MCP officer, notify the involved officer's **Assistant** Chief and fax a copy of the report to the **Assistant** Chief, FSB.
 - c. Notify Internal Affairs Division (IAD) of the incident.
 - d. **If the officer involved is from another jurisdiction, ensure that the officer's department is immediately notified.**

C. Civil **Protective Order** Issued for an MCP Officer

1. Sheriff's Responsibilities - The Sheriff's Office will contact the division/district commander and the Director, Family Crimes Division (FCD), when a civil **Protective Order** is issued for an MCP officer.
2. **Executive Officer Responsibilities**
 - a. The division/district commander will obtain the civil **Protective Order** and ensure service.
 - b. The division/district commander will immediately notify the appropriate **Assistant** Chief who will determine the need to suspend the involved officer.
 - c. The **Assistant** Chief will notify the Chief of Police.
 - d. The department issued service weapon will be seized upon issuance of a civil **Protective Order**, after consultation with the Assistant Chief.
 - e. The Director, FCD, will notify the Director, IAD.

- D. An officer who is the respondent or petitioner in a civil **Protective Order** hearing will not wear any part of their uniform to the hearing.

VIII. Verizon Hope Line/ADT AWARE Alarm

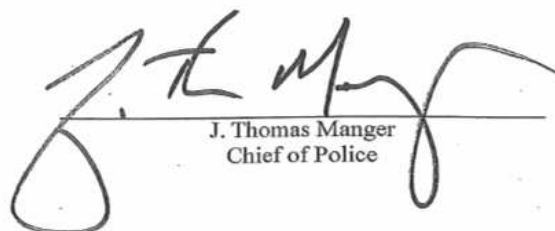
The DVU and the Sheriff's Office sponsor **two** programs where the victims of domestic abuse, fitting certain criteria, can obtain the use of **a Verizon Hope Line** (cellular) phone **and/or an ADT AWARE alarm** to contact the police department in an emergency. **When dispatched to an "AWARE alarm," officers will respond priority.**

IX. CALEA Standards: 42.1.4, 55.2.3, 74.2.1

X. Proponent Unit: Domestic Violence Unit

XI. Cancellation

This directive cancels Function Code 535, effective date 03-28-03, and Headquarters Memorandum 05-05 and 96-27.


J. Thomas Manger
Chief of Police